

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:FSH:BOS:TL-N-1507-01
BJLaterman

date:

to: Director - Area One
SBSE Compliance - Technical Support
E:PPQMB:D.Lacourse

from: Associate Area Counsel
LMSB, Boston

subject: [REDACTED]
Statute Extension for [REDACTED] Taxable Year
Statute Expiration: [REDACTED]

This memorandum responds to your request that we render advice regarding extending the statute for the above-mentioned corporation's [REDACTED] taxable year. This memorandum should not be cited as precedent.

[REDACTED] is a corporation which on [REDACTED] elected to be an S corporation. Pursuant to said election, [REDACTED] filed a Form 1120s (U.S. Income Tax Return for an S Corporation) for its [REDACTED] taxable year. The audit and examination procedure regarding the assessment of deficiencies and the filing of claims for credit and refund applicable to partnerships (i.e., the TEFRA procedures) are also applicable to S corporations in corporate tax years beginning after [REDACTED] and before [REDACTED]. The Small Business Job Protection Act of 1996 repealed the unified audit rules for S corporations effective for tax years beginning after December 31, 1996. I.R.C. § 6244, as repealed by P.L. 104-188 § 1307(c) (1). The [REDACTED] Form 1120s designated [REDACTED] as the Tax Matters Person (TMP) for the tax year of that return as provided for in Treas. Reg. § 301.62331(a) (7)-1(c).

I.R.C. § 6229(b) (1) provides that the statute of limitations attributable to the assessment of tax attributable to partnership items may be extended as to all partners by agreement between the IRS and the Tax Matters Partner. The statute for [REDACTED]'s [REDACTED] taxable year has been extended to [REDACTED] by an extension secured from [REDACTED] the Tax Matters Person designated on the tax return for said taxable

year. Since securing said extension, pursuant to a Massachusetts State Court decision, [REDACTED] has been removed as an office/director of [REDACTED]. Also, [REDACTED] (after [REDACTED]) may no longer be a shareholder of [REDACTED]. Advice has been requested as to whether it is still appropriate to secure a further extension for [REDACTED] from [REDACTED], as the Tax Matters Person.

A partner is defined in I.R.C. § 6231(a)(2) as:

- (A) a partner in the partnership, and
- (B) any other person whose income tax liability under subtitle A is determined in whole or part by taking into account directly or indirectly partnership items of the partnership.

[REDACTED] while he is presently not an officer/director and may no longer be a shareholder, has an interest in the outcome of any proceeding for [REDACTED] since his income tax liability will be effected by any adjustments. Therefore, [REDACTED] is still a partner (shareholder) for the purpose of the [REDACTED] TEFRA procedures.

The designation of a partner (shareholder) as the tax matters person for a specific taxable year may only be terminated as provided for in Regulations. Treasury Regulation § 301.6231(a)(7)-1 (1) (dealing with termination of designation) provides that a designation of a tax matters partner for a taxable year remains in effect until -

- (i) The death of the designated tax matters partner;
- (ii) An adjudication by a court of competent jurisdiction that the individual designated as the tax matters partner is no longer capable of managing the individual's person or estate;
- (iii) The liquidation or dissolution of the tax matters partner, if the tax matters partner is an entity;

- (vi) The partnership items of the tax matters partner became non-partnership items under section 6231(c) (relating to special enforcement areas); or
- (v) The day on which -
 - (A) The resignation of the tax matters partner under paragraph (i) of this section,
 - (B) A subsequent designation under paragraph (d), (e), or (f) of this section; or
 - (C) A revocation of the designation under paragraph (j) of this section becomes effective.

None of the events set forth in Treas. Reg. § 301.6231(a)(7)-1 (l) have occurred and, therefore, [REDACTED] is the proper TMP from whom to secure an extension for the [REDACTED] taxable year.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If we can be of any further assistance regarding securing an extension for [REDACTED], the undersigned can be reached at (617) 565-7855.

BARRY J. LATERMAN
Special Litigation Assistant